



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulation 10 of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011.**

**Chamber Ref: FTS/HPC/PR/19/3651**

**Re: Property at Binn Farm Cottage, Binn Farm, Glenfarg, Perthshire, PH2 9PX (“the Property”)**

**Parties:**

**Miss Nikki Balfour, Binn Farm Cottage, Binn Farm, Glenfarg, Perthshire, PH2 9PX (“the Applicant”)**

**Mr Alan MacGregor, Mrs Louise MacGregor, MacGregor House, Balvaird, Gateside, Fife, KY15 7SQ; MacGregor House, Balvaird, Gateside, Fife, KY15 7SQ (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £700 by the Respondents to the Applicant in terms of Regulation 10(a) of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011 (the Regulations) should be made. The Tribunal also determined that the Respondents should pay the deposit into one of the approved schemes within 14 days of the date of this decision in terms of Regulation 10(b) of the Regulations.

**Background**

The Applicant Nikki Balfour made an application under Rule 103 of the Rules of Procedure in respect of the failure to protect a tenancy deposit.

The tribunal had regard to the following documents:

1. Application received 13 November 2019.
2. Tenancy agreement dated 15 February 2019
3. Copies of Notice to Leave documentation
4. Emails between the applicant and the tenancy deposit schemes
5. Letter dated 19 December 2019 from the respondent Mrs Louise MacGregor to the Applicant.
6. Written submissions from the Respondents dated 13 July 2020.

### **Case Management Discussion**

The case management discussion was conducted by teleconference. The Applicant appeared in person and represented herself. The Respondents both appeared but Mr Alan McGregor spoke on behalf of both Respondents.

The parties agreed that a deposit of £650 had been paid by the Applicant to the Respondents around the start of tenancy, around 16 February 2019. As at the date of the case management discussion the tenancy between the parties continued, although the Respondent Mr MacGregor mentioned that the Respondents intended at some stage to seek to recover the property for occupation by a relative. No Tribunal proceedings had yet been initiated on that matter. The deposit had been retained by Mr MacGregor in a bank account and was still available although not yet due to be returned to the Applicant.

Mr MacGregor advised the Tribunal that the deposit had not been placed within one of the approved schemes. It was not disputed that the Applicant had required to move into the property more quickly than the Respondents had intended and this had occurred at a time when the Respondents were on holiday and matters were dealt with by Mr MacGregor's personal assistant. The failure to lodge the deposit had been a mistake and he apologised for that. In the written representations from the Respondents it was mentioned that they had become aware the deposit had not been lodged when Tribunal papers were served on them. Mr MacGregor was asked why the deposit had not been lodged at that stage( in January 2020) and he advised that both Respondents believed the applicant was vacating the property in January 2020 after service of a Notice to Leave in September 2019. The tenancy had however continued. Mr MacGregor accepted that he had other properties which were rented out by a Property Management company with deposits held within one of the approved schemes. He advised that he had nothing to do with those arrangements and this was the first time he and his wife had proceeded to rent out property which required a deposit to be placed in one of the schemes, without the assistance of a management company. Mr MacGregor for the Respondents appeared apologetic and very candid about the failure to lodge the deposit within one of the schemes.

## Findings In Fact

1. The parties entered into a relevant tenancy within the meaning of the 2011 Regulations commencing 16 February 2019.
2. The tenancy continues.
3. The applicant paid a deposit of £650 around the date of entry to the property.
4. The Respondents retained the deposit and placed it in a bank account where it remains in full.
5. The deposit has not been protected in an approved scheme during the tenancy up to the date of the case management discussion on 16 July 2020, some 17 months.
6. The Respondents failed to pay the deposit into the scheme at any time during the ongoing tenancy due to the circumstances around the start of the tenancy and error on their part.
7. When the Respondents realised that the deposit should have been paid into one of the schemes, in January 2020 they did not place the deposit into one of the approved schemes as they had served a Notice to Leave and expected the Applicant to vacate the property sometime in January 2020.
8. Mr Alan McGregor one of the Respondents has other properties which are let with the assistance of property management companies and in which deposits are protected within an approved deposit scheme.
8. The tenancy between the parties was the first tenancy in which a deposit required to be paid into an approved scheme which the Respondents have entered into without the assistance of a Property Management company.

The Tribunal considered the terms of the Regulations and was satisfied that it had sufficient information to determine the matter at this stage and that the procedure had been fair. The Tribunal was satisfied on the information it had before it that the Respondents had breached the duties in Regulation 3 of the 2011 Regulations.

## Reasons for Decision

It fell to the Tribunal to consider what award should be made in respect of the failure to protect the deposit and the failure to notify the tenant of the information required to be given to the tenant in terms of Regulations 3 and 42 of the 2011 regulations. The Tribunal had regard to the case of ***Russell –Smith and others v Uchegbu [2016] SC EDIN 64***. In particular the Tribunal considered what was a fair, proportionate, and just sanction in the circumstances of this case, always having regard to the purpose of the regulations and the gravity of the breach. Each case will depend upon its own facts and the exercise by the Tribunal of its judicial discretion is a balancing exercise. The Tribunal weighed all the relevant factors and found it to be of importance that the deposit had been protected for the entirety of the tenancy to date, some 17 months. This was said to have come around due to the haste in which the tenancy had been arranged when the Respondents were on holiday and when it was realised that the tenancy deposit had not been paid into scheme in January 2020, this had not done as it was believed that stage that the Applicant would be vacating the property in the

same month. This was the first time the Respondents had effectively rented property in which a deposit required to be protected without professional assistance.

The Tribunal did not find that the breach was deliberate or a flagrant abuse of the Regulations. All parties here approached the Tribunal candidly with an appreciation of each other's position. In particular the Tribunal noted that the Respondents had accepted the breach in advance of the case management discussion and appeared genuine and apologetic for their error. Whilst ignorance of the requirement to protect a deposit is no excuse, this was the first time they had entered into such a tenancy without professional assistance. Having considered all of these factors and despite the length of time the deposit has been unprotected, balancing the relevant factors the Tribunal took the view that a sanction of £700, just over the amount of the deposit paid was appropriate in this case.

As the tenancy continues and may do for some time, the Tribunal also made an order in terms of Regulation 10 of the 2011 Regulations ordering the Respondents to place the deposit within one of the approved schemes within 14 days of the date of the case management discussion on 16<sup>th</sup> July 2020.

## **Decision**

**The Tribunal grants an order against the Respondents for payment to the Applicant of the sum of £700 in terms of Regulation 10 of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011.**

**The Tribunal orders the Respondents to place the deposit within one of the approved schemes within 14 days of the date of the case management discussion on 16 July 2020, in terms of Regulation 10 (b) of the Tenancy Deposit Schemes ( Scotland ) Regulations 2011.**

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Valerie Bremner

16<sup>th</sup> July 2020

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**Legal Member/Chair**

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**Date**